

To: Foss, Scott[sfoss@blm.gov]; Santucci, Vincent[vincent_santucci@nps.gov]
Cc: Beasley, Barbara A -FS[babeasley@fs.fed.us]; Schumacher, Bruce A -FS[baschumacher@fs.fed.us]
From: Fracasso, Mike -FS
Sent: 2017-10-31T14:44:08-04:00
Importance: Normal
Subject: RE: HR 3990 - Specific Reference to Fossils
Received: 2017-10-31T14:44:43-04:00

Scott, thanks for forwarding!

--Mike



Michael Fracasso, PhD
Assistant Director, Geological Resources, Hazards, and Services

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Caring for the land and serving people

From: Foss, Scott [mailto:sfoss@blm.gov]
Sent: Tuesday, October 31, 2017 9:13 AM
To: Santucci, Vincent <vincent_santucci@nps.gov>
Cc: Fracasso, Mike -FS <mfracasso@fs.fed.us>; Beasley, Barbara A -FS <babeasley@fs.fed.us>; Schumacher, Bruce A -FS <baschumacher@fs.fed.us>
Subject: Re: HR 3990 - Specific Reference to Fossils

Hello,

I still haven't heard anything on this bill, but I'll let you know if I do. There are other bills of peripheral interest, but none relate directly to paleo.

I did discover this nugget. In response to the

United States vs. Diaz, 1974, case (that found that the phrase "objects of antiquity" was constitutionally vague), the DOI proposed adding a subpart to its departmental rule on the

preservation of antiquities (at 43 C.F.R. 3) that would define "objects of antiquity". The proposed amendment was never adopted, but it would have included vertebrate fossils. (attached)

Interesting.

S

Scott E. Foss, PhD
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On Mon, Oct 16, 2017 at 9:12 AM, Foss, Scott <sfoss@blm.gov> wrote:
We should coordinate if/when we are asked to comment (especially if any of us don't all get asked by our own bureau). I would hate to miss an opportunity to comment on this.

S

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On Fri, Oct 13, 2017 at 7:21 PM, Santucci, Vincent <vincent_santucci@nps.gov> wrote:
Very good suggestion Scott -

When agencies are provided the opportunity to comment on the more complete version of the bill - we can have both BLM and NPS ask for the technical correction to change "fossil" to "paleontological resources."

On Fri, Oct 13, 2017 at 2:44 PM, Foss, Scott <sfoss@blm.gov> wrote:
Mike brings up a good point about the definition of an object of antiquity. The 9th Circuit Court (

United States vs. Diaz, 1974) found that under the Antiquities Act the phrase "objects of antiquity" was constitutionally vague (REFERENCED ON P.17 OF VINCE'S 2006 PAPER). After that decision the BLM shifted to FLPMA as the authority to preserve and manage fossils. Now we have PRPA to serve as that authority.

So I am glad that H.R. 3990 would correct the oversight of defining an object of antiquity. However, the proposed definition of object or objects of antiquity uses the language "*fossils (other than fossil fuels)*". It would be nice to accomplish this by changing the line to "*paleontological resources*". This would put the proposed law in line with PRPA, which already excludes fossil fuels and other economic minerals from the definition of a paleontological resource through the savings provisions at Section 6311.

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On Fri, Oct 13, 2017 at 12:22 PM, Fracasso, Mike -FS <mfracasso@fs.fed.us> wrote:
Thanks for forwarding this Vince. It is somewhat nice to see that the H.B. specifically calls out fossils as objects meriting protections under the Antiquities Act (as long as they don't occur spread out over areas greater than 85,000 acres—apparently no area greater than that is worth designating/protecting, whatever the reason). However, the suggested area restrictions and other conditions related to monument designation are pretty unpalatable imo, and it's difficult to reconcile teasing out for attention only one facet of a proposed act which is otherwise pretty onerous re. the process of designating national monuments. If the bill gains traction we may be able to obtain at least some comfort from the specification of fossils as objects of antiquity by listing. Otherwise...the bill presents pretty meager fare. The presence of fossils certainly doesn't seem to have impacted much discussion on proposals to reduce areas of designated Monuments such as GSENM...

Certainly bears watching, though.

--Mike



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From: P. David Polly, SVP [mailto:svp_president@vertpaleo.org]
Sent: Friday, October 13, 2017 10:04 AM
To: Vince Santucci <vincent_santucci@nps.gov>

Cc: Ted Vlamis <tedjv@pioneerballoon.com>; Shimada, Kenshu <KSHIMADA@depaul.edu>; Scott Foss <sfoss@blm.gov>; Greg Liggett <gliggett@blm.gov>; Fracasso, Mike -FS <mfracasso@fs.fed.us>; Breithaupt, Brent <bbreitha@blm.gov>; Philip Gensler <pgensler@blm.gov>; Greg McDonald <greg_mcdonald@nps.gov>; Glenn Storrs <gstorrs@cincymuseum.org>

Subject: Re: HR 3990 - Specific Reference to Fossils

Thank you, Vince. We have already started to watch this bill carefully. I presume paleontological work falls under categories of both science and geology in addition to objects of antiquity?

On 13 Oct 2017, at 11:59 AM, Santucci, Vincent
<vincent_santucci@nps.gov<mailto:vincent_santucci@nps.gov>> wrote:

FYI -

HR 3990 draft bill and media attached here. Please note that "fossils" are specifically included in "Objects of Antiquity". This is an important discussion. Attached is an article I published on this topic in 2006 (during the centennial of the Antiquities Act).

NATIONAL MONUMENTS

Antiquities Act revision advances

Jennifer Yachnin<https://www.eenews.net/staff/Jennifer_Yachnin>, E&E News reporter

Published: Thursday, October 12, 2017

The House Natural Resources Committee last night voted in favor of legislation that would overhaul the Antiquities Act for the first time since its enactment more than a century ago, approving reforms that would sharply reduce the size of future monuments and create a formal process for reductions.

Lawmakers passed the measure sponsored by Chairman Rob Bishop (R-Utah) on a party-line vote, 23 to 17.

"The only path to transparency and to accountability that we all claim to be seeking, no matter which party controls the White House, is to amend the act itself," Bishop said in his opening remarks.

The Utah lawmaker's legislation, H.R.

3990<https://www.eenews.net/assets/2017/10/10/document_daily_04.pdf>, the "National Monument Creation and Protection Act," would limit the size of new monuments to a maximum of 85,000 acres and require approval from local and state lawmakers and governors, as well as review under the National Environmental Policy Act.

The measure, also known as the "CAP Act," would also limit designations to protect areas with relics, cultural artifacts and fossils, while eliminating the inclusion of "vast landscape domains."

As the law stands now, a president may designate existing public lands as a monument to protect areas of cultural, scientific or historical value, without any restrictions on acreage.

During the committee's markup, Bishop noted the legislation would refocus the law on its original intent of protecting man-made relics, and that requirements for NEPA review and state or local input would provide a formal decisionmaking process for new monuments.

"It establishes a process to get information before the designation, not afterward," Bishop said. He criticized unspecified monuments created in recent years as designations made "not on scientific or archaeological" basis "but for political purposes."

Bishop has been a longtime critic of the Antiquities Act, specifically with sites in his home state including the Bears Ears National Monument created by President Obama in late 2016 and the Grand Staircase-Escalante National Monument created by President Clinton in 1996.

Arizona Rep. Raúl Grijalva, the committee's top Democrat, slammed Bishop's proposal, which he said "essentially destroys the Antiquities Act."

"We need additional national monuments, not fewer. Our national monuments should be larger, not smaller," he later added.

Democratic lawmakers and conservation groups also criticized Bishop's bill ahead of the hearing, arguing its passage would lead to fewer national parks in the future.

About one-third of national monuments created under the Antiquities Act have been converted to national parks, historic parks or sites, national preserves, or other properties controlled by the National Park Service, according to data provided by the Wilderness Society.

But Bishop rebutted those claims as "misinformation" intended to create opposition to his legislation. "With all due respect, Trump Tower could not be made a national monument because that's private property," Bishop noted wryly.

He later added: "The idea that Grand Canyon or Zion National Park would never have been created without this is misinformation. Those are national parks that can only be made by Congress. The idea that this stops the process is simply one of those things you throw out there that is a nice argument, but it's not a real argument."

Democrats did praise provisions in Bishop's bill that would prohibit presidents from reducing a monument by more than 85,000 without agreement of local and state officials.

Opponents have argued presidents do not have authority to reduce monuments under the Antiquities Act and have vowed to challenge the Trump administration in court if it attempts to do so.

Although presidents have previously reduced the size of some monuments, none of those cases has ever been tested in federal court. President Kennedy was the last to do so when he modified the Bandelier National Monument in New Mexico.

"There is something good about this bill," said Virginia Rep. Don McEachin (D). "And that is that it points out that the president has no authority to unilaterally shrink or undesignate a national monument under current law. This admission is useful because the president may soon try to invoke that nonexistent power to the lasting detriment of our country."

Earlier in the day Bishop said that such interpretations are incorrect, stating the bill does not create a "new power" but defines one that already exists (E&E News PM<<https://www.eenews.net/eenewspm/stories/1060063371>>, Oct. 11).

Democratic resolution

During the meeting, lawmakers also voted on a resolution of inquiry sponsored by Grijalva that aimed to force the Trump administration to disclose the details of its recent review of more than two dozen national monuments.

In a private report to President Trump in late August, which leaked to the media last month, Interior Secretary Ryan Zinke recommended reducing the boundaries of six monuments and altering the management plans of a handful more (Greenwire<<https://www.eenews.net/stories/1060060979>>, Sept. 18).

Neither the White House nor the Interior Department has commented on that report, which has not been finalized. Noting the Trump administration conducted an "extensive review," Grijalva said Democrats were attempting to force a formal disclosure of the recommendations.

"We would like to read that report," he said. "We would like to see the information that was gathered during the review process so we can make informed decisions regarding the value of the report."

The committee voted along party lines, 23-17, to report the resolution unfavorably to the House, effectively killing the measure.

Reporter Kellie Lunney contributed.

<https://www.eenews.net/eedaily/2017/10/12/stories/1060063399>

Here is the specific language which identifies "fossils" as "Objects of Antiquity":

“(3) OBJECT OR OBJECTS OF ANTIQUITY.—

“(A) The term ‘object or objects of antiquity’ means—

“(i) relics;
“(ii) artifacts;
“(iii) human or animal skeletal remains;
“(iv) fossils (other than fossil fuels); and
“(v) certain buildings constructed before the date of the enactment of this subsection.
“(B) The term ‘object or objects of antiquity’ does not include—
“(i) natural geographic features; and
“(ii) objects not made by humans, except fossils (other than fossil fuels) or human or animal skeletal remains.’”.

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Celebrate National Fossil Day - October 11, 2017
<http://nature.nps.gov/geology/nationalfossilday/>

<H.R. 3990 NM Creation and Protection Act.pdf><SANTUCCI 2006 - RANGER - FOSSILS, OBJECTS OF ANTIQUITY.pdf>

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